IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 566 OF 2003.

1. Mohan Sardarmal Jain
   age above 43.
2. Paresh Jayantilal Jain
   Age above 26.
   Both of Bombay, Indian Inhabitants
   carrying on business at shop No.10
   Summer Queen, 2nd Hasnabad Lane,
   Santacruz (W), Mumbai 400 054. .... Appellants.

Versus.

1. Rajiv Kishor Shah,
2. Kali Kishor Shah,
3. Mrs.Manjula Kishor Shah,
4. Shrayen Kishor Shah,
   all residing at Flat No.10,
   Shopping Center, 2nd floor,
   Station Road, Santacruz (West),
   Mumbai 400 054. .... Respondents.

Shri A.M.Saraogi with Shri N.D.Kamble for the Appellants.

None for the Respondents.

CORAM : ABHAY S. OKA, JJ.

DATED : 17th January, 2005.

ORAL JUDGMENT.

1. This Appeal was finally heard on 11th January 2005. The Appeal was adjourned till today to enable the Respondents to submit their case. However, none appears for the Respondents today.

2. The challenge in this Appeal from Order is to the order dated 18th July 2003 passed by the learned Judge of the City Civil Court at Bombay directing return of the plaint. The Appellants/original Plaintiffs filed suit in the City Civil Court against the Respondents for declaration that the Respondents had no right, title or interest of whatsoever nature to dispossess the Appellants or disturb their possession over the suit premises. A prayer for permanent injunction was also incorporated in the suit. The case of the Appellants is that the suit was adjourned from time to time for non-appearance of the Respondents. Thereafter, without there being any reply on record filed by the Respondents, the impugned order has been passed. The learned trial Judge held that the City Civil Court has no jurisdiction as the suit is in respect of protection of possession of the licensee under the leave and licence agreement. The learned trial Judge held that the Court had no inherent jurisdiction to entertain and try the suit. The learned Counsel appearing for the Appellants submitted that the impugned order is a cryptic order and no reasons are assigned for coming to the conclusion that there was no inherent jurisdiction in the City Civil Court to grant the reliefs prayed for in the plaint. The learned Counsel submitted that by

agreement dated 26th September 2001 the Appellants were inducted in the suit premises on leave and licence basis. The agreement was signed by the Respondent No.5 and late Shri Kishorechandra Shah. According to the Appellants after execution of the said agreement, a further Memorandum of Understanding came to be signed between the parties on 23rd October 2001 by which late Shri Kishorechandra Shah and the Respondent No.5 agreed to sell the suit premises to the Appellants. According to the Appellants further agreement dated 28th March 2002 was signed by the parties confirming the agreement recorded in the Memorandum of Understanding. He submitted that threat was given by the Respondents to dispossess the Appellants from the suit premises and therefore, suit was required to be filed for protection of possession. He submitted that the jurisdiction of the City Civil Court was not barred either expressly or impliedly. He invited my attention to the various provisions of the Maharashtra Rent Control Act, 1999 and in particular section 47 thereof. He therefore submitted that the impugned order was erroneous and was required to be quashed and set aside.

3. In so far as the issue of jurisdiction is concerned, same is required to be decided on the basis of the

averments made in the plaint. As stated earlier, the plaint refers to an agreement of leave and licence and the subsequent Memorandum of Understanding and agreement for sale. The Appellants claim to be in possession of the suit premises from the year 2001 and their case is that they are sought to be dispossessed.

4. The impugned order is a cryptic order. It is not clear from the order as to how the City Civil Court has no inherent jurisdiction to try this suit. In fact the order runs into only six lines, which reads as under:

> "The suit is in respect of protection of possession of a license under a leave and licence agreement dated 26.9.2001. This Court had no inherent jurisdiction to try this suit. The plaint is returned to proper Court for filing."

It is very difficult to understand from the said order as to how the jurisdiction of the City Civil Court is ousted. The averments made in the plaint prima facie show that the Appellant is claiming to be in possession of the suit premises initially under an Agreement of leave and licence and later on on the basis of a

Memorandum of Understanding and alleged agreement for sale. On plain reading of the plaint it appears that it is not a suit where possession is sought to be protected by the Appellant on the ground that he is a licensee.

5. As the impugned order is not a speaking order it is very difficult to understand under what provision of law jurisdiction of the trial Court is ousted. Without recording any clear finding, the plaint could not have been ordered to be returned by passing such a cryptic order. Moverover there is nothing on record to show that the issue of jurisdiction was framed or that the Plaintiff was put to any notice that issue of jurisdiction will be considered. In this view of the matter, the impugned order deserves to be quashed and set aside. It is, however, made clear that if at all any objection is raised by the Respondents to the jurisdiction on the basis of valuation of the suit or on any other grounds, the trial Court will be free to consider the same at apropriate stage after hearing the parties. Needless to say that while deciding such question, the learned trial Judge will pass a reasoned order.

6. Hence the following order is passed:

(i) The impugned order dated 18th July 2003 is quashed and set aside.

(ii) The trial Court will proceed further with the suit in accordance with law.

(iii) The Appeal is allowed in the above terms subject to the observations made in paragraph 5 above.

(iv) There will be no order as to costs.

Judge.